



DEPARTMENT OF VETERANS AFFAIRS

8320--01

38 CFR Part 17

RIN 2900-AQ63

Specialty Education Loan Repayment Program

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulations that govern scholarship programs to certain health care professionals. This rulemaking implements the mandates of the VA MISSION Act of 2018 by establishing a Specialty Education Loan Repayment Program, which will assist VA in meeting the staffing needs of VA physicians in medical specialties for which VA has determined that recruitment or retention of qualified personnel is difficult.

DATES: This rule is effective [insert date 30 days after date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Teresa Culpepper, Manager, Education Loan Repayment Services, 810 Vermont Avenue, NW, Washington, DC 20420, (501) 687-4064. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On December 26, 2019, VA published a proposed rule in the Federal Register (84 FR 70908) that called for the establishment of a new student loan repayment program, the Specialty Education Loan Repayment Program (SELRP).. VA provided a 60-day comment period, which ended on February 24, 2020. We received 4 comments on the proposed rule.

On June 6, 2018, section 303 of Public Law 115-182, the John S. McCain III, Daniel K. Akaka, and Samuel R. Johnson VA Maintaining Internal Systems and Strengthening Integrated Outside Networks Act of 2018, or the VA MISSION Act of 2018, amended title 38 of the United States Code (U.S.C.) by establishing new sections 7691 through 7697 and created the SELRP. The SELRP serves as an incentive for physicians starting or currently in residency programs in medical specialties, for which VA has determined that recruitment and retention of qualified personnel is difficult, to work at VA facilities that need more physicians within that medical specialty after the individual completes their residency program. VA will determine the anticipated needs for medical specialties during a period of two to six years in the future. In taking this proactive approach, VA will commence recruitment for physicians in these specialties before the projected need to help ensure adequate health care coverage for VA beneficiaries. This final rule will establish the requirements for the SELRP in new 38 CFR 17.525 through 17.531.

One commenter requested that VA expand the individuals who qualify for the SELRP to include certified registered nurse anesthetists (CRNAs). The commenter stated that they understand there is underutilization and staffing shortages of other types of providers, including certified registered nurse anesthetists (CRNAs), and the commenter asked that this loan repayment program be broadened to include incentives for recruitment and retention of advanced practice registered nurses (APRNs) in VA medical facilities. Another commenter similarly stated that to alleviate the primary care gap, a report recommends expanding the Primary Care Services Corps, which repays loans of nurse practitioners and physician assistants willing to work in underserved

areas, and creating more Medicare-funded or state-funded residency slots for primary care doctors willing to work in upstate areas that need more physicians. Another commenter recommended that VA provide flexibility in the eligibility requirements to allow for fellows to be eligible. Fellows could also benefit from the program and may only have one year left of training. The current requirement for this program, however, limits participation to physicians currently in training who have more than two years remaining to complete such training. The commenter further added that fellows could deepen the applicant pool for the program, helping to facilitate participation by more psychiatrists during this time of critical need.

We agree with the commenters in that VA's shortage of health care professionals is not limited to physicians. However, 38 U.S.C. 7693 establishes the eligibility criteria for individuals who wish to participate in the SELRP. This criteria states that eligible individuals must be recently graduated from an accredited medical or osteopathic school and matched to an accredited residency program in a medical specialty described in section 7692 of this title; or a physician in training in a medical specialty described in section 7692 of this title with more than 2 years remaining in such training. As such, VA cannot extend the eligibility criteria to include individuals who are not otherwise listed in section 7692. We are not making any changes based on these comments.

A commenter requested that CRNAs be granted the ability to practice to the full scope of their education, training, licensure, and certification in VA medical facilities to allow veterans to receive access to safe and timely anesthesia services. The commenter stated that this step would make an anesthesia position within the VA more

attractive in its own right to prior active duty and civilian CRNAs. The commenter's request that VA grant CRNAs full practice authority is beyond the scope of the proposed rule. We are not making any changes based on this comment.

Another commenter recommended expanding the Doctors Across New York, or DANY, program that, as one of its features, forgives up to \$150,000 of student loan debt for young physicians who commit to practicing medicine in certain parts of the state for at least five years. The commenter stated that medical school graduates from the class of 2012 left school with an average student loan debt of \$166,750, according to the Association of American Medical Colleges. The commenter added that in the most recent round of the DANY program, 26 young doctors in 2013 received the full, five-year awards. The SELRP is not a loan forgiveness program. Section 7494(c)(1) of 38 U.S.C. states that the amount of payments made for a participant under the SELRP may not exceed \$160,000 over a total of four years of participation in the Program, of which not more than \$40,000 of such payments may be made in each year of participation in the Program. If an individual participates in the SELRP for four years, the total amount of repayment of the individual's educational loan would be more than the \$150,000 that the commenter stated that is repaid under the DANY. Also, VA does not have the statutory authority to adopt any provision of the DANY and any such adoption is beyond the scope of the proposed rule. We are not making any changes based on this comment.

Several comments proposed opening new physician or medical schools, with some comments offering a specific number of schools to be opened, and some comments offering specific reasons why such schools should be opened or current

failings to open such schools. The opening of new physician or medical schools is beyond the scope of the proposed rule and is not within VA's authority to do under section 303 of Public Law 115-182. We are not making any changes based on these comments.

A commenter referred to a HANYS survey and stated that they agree with this survey in that the survey recommends greater use of telemedicine to allow certain specialists to remotely provide a consultation or other medical service to patients in underserved areas of the state. The commenter did not provide more details on the source of the survey or the date of the study, so we are not clear what this survey might refer or relate to. Although the provision of telehealth services is beyond the scope of the proposed rule, we generally respond that VA has regulations in place that grant VA health care professionals the ability to provide telehealth services, within their scope of practice, functional statement, and/or in accordance with privileges granted to them by VA, irrespective of the State or location within a State where the health care provider or the beneficiary is physically located. See 38 CFR 17.417. VA also has statutory authority under 38 U.S.C. 1730C for the provision of telehealth services by VA health care professionals. We are not making any changes based on this comment.

A commenter stated that incentives for medical students to pursue a career in primary care by helping with student loans is not enough to change what the commenter stated was a trend in which less than 10 percent of medical students are going into primary care. The commenter added that Medicare needs to restructure the reimbursement system now so current family practitioners, internists and pediatricians will have higher pay. The restructuring of Medicare's reimbursement system is beyond

the scope of the proposed rulemaking. We are not making any changes based on this comment.

Another commenter indicated that they have long advocated for better recruitment of psychiatrists in the VA through the Clay Hunt Suicide Prevention for American Veterans Act, which included a pilot project encouraging more psychiatrists to choose a career with the VA by offering medical school loan repayments on par with those offered by other government agencies and private practices. The commenter added that the program was never implemented, but they are encouraged by the release of the SELRP and its potential to incentivize more psychiatrists to pursue careers with the VA. VA established into regulations the Program for the Repayment of Educational Loans for Certain VA Psychiatrists (PREL), which was established by Public Law 114-2, section 4, the Clay Hunt Suicide Prevention for American Veterans Act (Clay Hunt SAV Act). See 81 FR 66820, Sept. 29, 2016. VA is planning to implement the PREL in the near future and agrees with the commenter that the PREL will help alleviate the shortage of VA psychiatrists and increase veterans' access to needed mental health care. We are not making any changes based on this comment.

A commenter recommended that the SELRP be portable to sites where specialty is needed instead of the recipient being placed in one location. We believe the commenter intended to recommend that the SELRP be portable to VA facilities where a resident's specialty is needed, to enable rotations or other multiple assignments of such residents. As previously stated in this rulemaking, the SELRP serves as an incentive for physicians starting or currently in residency programs in medical specialties for which VA has determined that recruitment and retention of qualified personnel is

difficult, to work for VA at VA facilities that need more physicians with that medical specialty after the individual completes their residency program. VA will continuously monitor locations where there is the greatest need for physician specialties and appoint qualified individuals to these locations. To the extent the commenter recommends that VA enable rotations of residents in the SELRP, such administrative matters could be addressed outside of regulation and do not relate to the aspects of the SELRP that were proposed. We are not making any changes based on this comment.

A commenter stated that special protections or a continuation of eligibility should also be included for parental leave to encourage women to participate. The commenter added that given that this is early career, such protections are necessary to support applicants. The commenter also stated that Federal guidelines on parental leave should be followed as a minimum. VA agrees with the commenter. Because the participants of the SELRP are appointed VA employees, all Federal rules regarding parental leave apply. We are not making any changes based on this comment.

A commenter recommended that VA ensure that they coordinate with local VAs to announce and connect potential loan repayment recipients with local vacancies. The proposed rule stated in § 17.527(a)(1) that in determining staffing needs, VA will consider the anticipated needs of VA for a period of two to six years in the future. VA will publish these vacancies in a notice in the Federal Register on an annual basis until vacancies are filled. Also, under § 17.530(b)(2), VA will provide SELRP participants a list of qualifying medical facility locations from which a participant may select a service location. However, VA reserves the right to make final decisions on the location and position of the obligated service. All placements will be coordinated and verified with

local VA medical centers, including preliminary identification position need and medical center participation through selection and placement of eligible candidates. We are not making any changes based on this comment.

A commenter also recommended that VA develop a process to comprehensively evaluate and track the application and placement process for accountable and equitable disbursement among the applicants, to ensure that psychiatrists are receiving equivalent consideration for this program among the specialties. The commenter added that this process could also include a mechanism to ensure the application process is not too burdensome for prospective candidates, thus streamlining the process overall. VA is leveraging existing programs and technologies to meet the lengthy application requirements while minimizing redundant requests for information. For example, VA will utilize approved VA forms to collect personnel and job application information instead of creating new program forms. We are not making any changes based on this comment.

We are making technical edits to § 17.529(c)(2)(i) for clarity. Proposed § 17.528(c)(2)(i) stated that a summary of the applicant's educational debt, which includes the total debt amount and when the debt was acquired, would be one piece of information that must be provided to VA. Proposed § 17.528(c)(2)(i) further stated that the health professional debt covered the loan must be specific to education that was required, used, and qualified the applicant for appointment as a physician. We have amended this paragraph to now state a summary of the applicant's educational loan, which includes the total loan amount and when the loan was acquired. The educational loan must be specific to the education that was required and used to qualify the applicant for appointment as a physician. VA always intended the meaning of the

educational loan in this paragraph to clearly state that the eligible loan would only be that which was required and used to qualify an applicant for the SELRP. This change does not result in any substantive change in meaning and is only intended to be a technical change.

Based on the rationale set forth in the Supplementary Information to the proposed rule and in this final rule, VA is adopting the proposed rule with the edits discussed in this rule.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (at 44 U.S.C. 3507) requires that VA consider the impact of paperwork and other information collection burdens imposed on the public. According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number. This rule includes provisions constituting new collections of information under the Paperwork Reduction Act of 1995 that require approval by the OMB. Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking action to OMB for review.

38 CFR 17.528 contains collections of information under the Paperwork Reduction Act of 1995. If OMB does not approve the collections of information as requested, VA will immediately remove the provisions containing a collection of information or take such other action as is directed by the OMB.

The collections of information contained in 38 CFR 17.528 are described immediately following this paragraph.

Title: Specialty Education Loan Repayment Program.

Summary of collection of information: The information required determines the eligibility or suitability of an applicant desiring to participate in the SELRP under the provisions of 38 U.S.C. 7691 through 7697. The purpose of the SELRP would be to repay educational loans to individuals who pursued a program of study leading to a degree in medicine and who are seeking employment in VA. VA considers this program as a hiring incentive to meet the staffing needs for physicians in medical specialties for which VA determines that recruitment and retention of qualified personnel is difficult.

Description of the need for information and proposed use of information: The information is needed to apply for the SELRP. VA will use this information to select qualified candidates to participate in this program.

Description of likely respondents: Potential participants of the SELRP.

Estimated number of respondents per month/year: 200 per year.

Estimated frequency of responses per month/year: 1 time per year.

Estimated average burden per response: 90 minutes.

Estimated total annual reporting and recordkeeping burden: 80 hours.

Estimated cost to respondents per year: VA estimates the total cost to all respondents to be \$8,130 per year.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The provisions associated with this rulemaking are not processed by any other entities outside of VA. Therefore, pursuant

to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Executive Orders 12866, 13563 and 13771

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866.

VA's impact analysis can be found as a supporting document at <http://www.regulations.gov>, usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's website at <http://www.va.gov/orpm/>, by following the link for "VA Regulations Published From FY 2004 Through Fiscal Year to Date."

This final rule is not expected to be an EO 13771 regulatory action because this final rule is not significant under EO 12866

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the

aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

Catalog of Federal Domestic Assistance

There are no Catalog of Federal Domestic Assistance numbers and titles for this rule.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Health care, Health facilities, Health professions, Health records, Medical and dental schools, Scholarships and fellowships, Veterans.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Brooks D. Tucker, Acting Chief of Staff, Department of Veterans Affairs, approved this document on July 13, 2020, for publication.

Consuela Benjamin,

Regulations Development Coordinator,
Office of Regulation Policy & Management,
Office of the Secretary,
Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 17 as follows:

PART 17 – MEDICAL

1. The authority citation for part 17 is amended as follows:

Authority: 38 U.S.C. 501, and as noted in specific sections.

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Sections 17.525 through 17.531 are also issued under 38 U.S.C. 7691 through 7697.

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2. Adding an undesignated center heading immediately following § 17.511 and new §§ 17.525 through 17.531 to read as follows.

SPECIALTY EDUCATION LOAN REPAYMENT PROGRAM

17.525 Purpose.

17.526 Definitions.

17.527 Eligibility.

17.528 Application.

17.529 Award procedures.

17.530 Agreement and obligated service.

17.531 Failure to comply with terms and conditions of agreement.

§ 17.525 Purpose.

The purpose of §§ 17.525 through 17.531 is to establish the Specialty Education Loan Repayment Program (SELRP). The SELRP is an incentive program for certain individuals to meet VA's need for physicians in medical specialties for which VA determines that recruitment and retention of qualified personnel is difficult. Assistance under the SELRP may be in addition to other assistance available to individuals under the Educational Assistance Program under 38 U.S.C. 7601.

§ 17.526 Definitions.

The following definitions apply to §§ 17.525 through 17.530:

Educational loan means a loan, government or commercial, made for educational purposes by institutions that are subject to examination and supervision in their capacity as lending institutions by an agency of the United States or of the state in which the lender has its principal place of business. Loans must be for the actual costs paid for tuition, and other reasonable educational expenses such as living expenses, fees, books, supplies, educational equipment and materials, and laboratory expenses. Loans must be obtained from a government entity, a private financial institution, a school, or any other authorized entity stated in this definition. The following loans do not qualify for the SELRP:

- (1) Loans obtained from family members, relatives, or friends;
- (2) Loans made prior to, or after, the individual's qualifying education;

(3) Any portion of a consolidated loan that is not specifically identified with the education and purposes for which the SELRP may be authorized, such as home or auto loans merged with educational loans;

(4) Loans for which an individual incurred a service obligation for repayment or agreed to service for future cancellation;

(5) Credit card debt;

(6) Parent Plus Loans;

(7) Loans that have been paid in full;

(8) Loans that are in default, delinquent, not in a current payment status, or have been assumed by a collection agency;

(9) Loans not obtained from a bank, credit union, savings and loan association, not-for-profit organization, insurance company, school, and other financial or credit institution which is subject to examination and supervision in its capacity as a lending institution by an agency of the United States or of the state in which the lender has its principal place of business;

(10) Loans for which supporting documentation is not available;

(11) Loans that have been consolidated with loans of other individuals, such as spouses, children, friends, or other family member; or

(12) Home equity loans or other noneducational loans.

SELRP means the Specialty Education Loan Repayment Program established in §§ 17.525 through 17.530.

State means a State as defined in 38 U.S.C. 101(20), or a political subdivision of such a State.

VA means the Department of Veterans Affairs.

§ 17.527 Eligibility.

(a) *General.* An individual must meet the following requirements to be eligible to participate in the SELRP:

(1) Will be eligible for appointment under 38 U.S.C. 7401 to work as a physician in a medical specialty for which VA determines that recruitment or retention of qualified personnel is difficult. In determining staffing needs, VA will consider the anticipated needs of VA for a period of two to six years in the future. VA will publish these vacancies in a notice in the **Federal Register** on a yearly basis until vacancies are filled.

(2) Owes any amount of principal or interest for an educational loan where the proceeds were used by or on behalf of the individual to pay costs relating to a course of medical education or training that leads to employment as a physician and;

(3) Is:

(i) Recently graduated from an accredited medical or osteopathic school and matched to an accredited residency program in a medical specialty designated by VA; or

(ii) A physician in training with more than 2 years remaining in such training.

(b) *Applicants without a residency match.* An applicant may apply for the SELRP before receiving a residency match during the applicant's senior year of medical or osteopathic school. Once the applicant is matched with a residency specialty stated in § 17.525 and upon selection of the SELRP, VA must offer the applicant participation in the SELRP no later than 28 days after:

(1) The applicant is matched with the residency; and

(2) VA has published the residency in a Notice in the **Federal Register**. Such notices are published on a yearly basis until vacancies are filled.

(c) *Preferences*. VA will give preference to eligible participants who:

(1) Are, or will be, participating in residency programs in health care facilities that are:

(i) Located in rural areas;

(ii) Operated by Indian tribes, tribal organizations, or the Indian Health Services;

or (iii) Are affiliated with underserved health care facilities of VA; or

(2) Veterans.

§ 17.528 Application.

(a) *General*. A complete application for the SELRP consists of a completed application form, letters of reference, and personal statement.

(b) *References*. The applicant must provide the following letters of reference and sign a release of information form for VA to contact such references:

(1) One letter of reference from the Program Director of the core program in which the applicant is training, which indicates that the applicant is in good to excellent standing, or, for individuals who have yet to initiate training, a letter of reference from a faculty member or dean;

(2) One or more letters of reference from faculty members under which the applicant trained; and

(3) One letter of reference from a peer colleague who is familiar with the practice and character of the applicant.

(c) *Personal statement.* The personal statement must include the following documentation:

(1) A cover letter that provides the following information:

(i) Why the applicant is interested in VA employment;

(ii) The applicant's interest in working at a particular medical specialty and underserved area;

(iii) Likely career goals, including career goals in VA; and

(iv) A brief summary of past employment or training and accomplishments, including any particular clinical areas of interest (e.g., substance abuse).

(2) The following information must be provided on a VA form or online collection system and is subject to VA verification:

(i) A summary of the applicant's educational loan, which includes the total loan amount and when the loan was acquired. The educational loan must be specific to the education that was required and used to qualify the applicant for appointment as a physician.

(ii) The name of the lending agency that provided the educational loan.

(3) A full curriculum vitae.

(The Office of Management and Budget has approved the information collection requirements in this section under control number XXXX–XXXX.)

§ 17.529 Award procedures.

(a) *Repayment amount.* (1) VA may pay no more than \$40,000 in educational loan repayment for each year of obligated service for a period not to exceed four years for a total payment of \$160,000.00.

(2) An educational loan repayment may not exceed the actual amount of principal and interest on an educational loan or loans.

(b) *Payment.* VA will pay the participant, or the lending institution on behalf of the participant, directly for the principal and interest on the participant's educational loans. Payments will be made monthly or annually for each applicable service period, depending on the terms of the agreement. Participants must provide VA documentation that shows the amounts that were credited or posted by the lending institution to a participant's educational loan during an obligated service period. VA will issue payments after the participant commences the period of obligated service. Payments are exempt from Federal taxation.

(c) *Waiver of maximum amount of payment.* VA may waive the limitations under paragraph (a)(1) of this section to participants of the SELRP if VA determines that there is a shortage of qualified employees due to either the location of where the participant will serve the period of obligated service or the requirements of the position that the participant will hold in VA. However, the waiver may not exceed the actual amount of the principal and the interest on the participant's loans payable to or for that participant.

§ 17.530 Agreement and obligated service.

(a) *General.* In addition to any requirements under section 5379(c) of title 5, a participant in the SELRP must agree, in writing, to the following:

- (1) Obtain a license to practice medicine in a State;
- (2) Successfully complete postgraduate training leading to eligibility for board certification in a medical specialty;

(3) Serve as a full-time clinical practice employee of VA for 12 months for every \$40,000.00 that the participant receives payment through the SELRP, however, the participant must serve for a period of no fewer than 24 months; and

(4) Except as provided in paragraph (b) of this section, begin obligated service as a full-time VA employee no later than 60 days after completing residency in the medical specialty described in § 17.527(a)(1).

(b) *Obligated service.* (1) *General provision.* A participant's obligated service will begin on the date on which the participant begins full-time permanent employment with VA in the qualifying field of medicine in a location determined by VA. Obligated service must be full-time permanent employment and does not include any period of temporary or contractual employment.

(2) *Location and position of obligated service.* VA will provide SELRP participants a list of qualifying medical facility locations. A participant may select a service location from that list. However, VA reserves the right to make final decisions on the location and position of the obligated service.

(c) *Exception to commencement of obligated service.* If a participant receives an accredited fellowship in a medical specialty other than the specialty described in § 17.27(a)(1), the participant may request, in writing, a delayed commencement of the period of obligated service until after the participant completes the fellowship. However, the period of obligated service will begin no later than 60 days after completion of such fellowship in the medical specialty described in § 17.527(a)(1).

§ 17.531 Failure to comply with terms and conditions of agreement.

A participant of the SELRP who fails to satisfy the period of obligated service will owe the United States government an amount determined by the formula $A = B \times ((T - S) \div T)$, where:

- (a) “A” is the amount the participant owes the United States government.
- (b) “B” is the sum of all payments to or for the participant under the SELRP.
- (c) “T” is the number of months in the period of obligated service of the participant.
- (d) “S” is the number of whole months of such period of obligated service served by the participant.